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STATISTICS AND CONFIDENTIALITY IN THE PORTUGUESE CASE

Supporting Paper

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¹ Prepared by Ana Dulce Pinto (ana.dpinto@ine.pt).

Statistics and confidentiality in the Portuguese case

Ana Dulce Pinto*

* National Statistical Institute, Statistical Council Secretariat, Lisbon, Portugal, ana.dpinto@ine.pt

Abstract:

Title: “Statistics and Confidentiality in the Portuguese Case”

Abstract: The paper will detail the cross legal references that should be taken into account when dealing with statistical confidentiality applying to the Portuguese case: The link will be made with the organization of the Portuguese Statistical System. The growing social pressure to meet users’ needs keeping untouched the trust of the respondents is an old challenge but still main question for statisticians which will be pointed out in the presentation. In particular, three questions and three answers that will define a new point of balance between information freedom and confidentiality in the Portuguese case: 1) What exists? 2) What may be improved? 3) What can be done?

1 – Cross legal references concerning confidentiality

Statistical confidentiality has always asked for the attention of everyone working in statistical production mainly for two reasons: on one hand, its importance to guarantee the respondents trust (families, enterprises and others), and on the other, the practical difficulty to disseminate solid and relevant statistics at a detailed level, without disappointing the confidence of the respondents.

Restating this was recently approved the Code of Practice of European Statistics. This code refers Statistical Confidentiality as one of the main principles thus conferring it identical importance as others such as statistical impartiality or the need of a sound statistical methodology.

Nowadays, in Portugal, two legal main devices may be applied to confidentiality issues:

Firstly and with higher importance, the National Statistical Law that establishes the main principles as well as the working methods and composition of the Statistical System. It is a 1989 Law which is no longer enough to assure a prompt reply to all situations and doubts concerning the limits and scope of statistical confidentiality. This difficulty, amongst others, has been unanimously appointed by statisticians and statistical users as the reason for the revision of this law, which has recently started.

Being certain that the processes of revision of legal procedures are quite slow, the truth is that concerning confidentiality issues, the new text that will be adopted could always benefit from the discussions and conclusions around the concept and boundaries of statistical confidentiality, undertaken at international level, namely in EUROSTAT and more widened circles as the OCDE.

Secondly, but also very important is a specific diploma that establishes the access rules, collection and processing by INE of personal data from administrative sources used for statistical purposes. This diploma results from a specific need, felt both by INE and the national entity responsible for the control and supervision of the application of the rules concerning data protection, to legalize all the mechanisms adopted whenever personal data are collected for statistical purposes, taking advantage of administrative sources.

Still at the level of the national law, even if not directly applicable to statistics, it is inevitable the intersection of the Personal Data Protection Law (resulting from the transposition of Directive 95 / 46/ CE) with the statistical legislation. In fact, there are many personal data collected for statistical purposes, either through specific surveys or through the exploitation of administrative data. The Portuguese Law that transposes the Directive did not consider statistics as a special purpose of the personal data collection that could justify differentiated treatment of other entities. In fact the Statistical Law in Portugal does not constitute "*lex specialis*" in relation to the text that transposes the community Directive. This means that INE needs a special authorization from the competent entity to collect or treat personal data, such as any private enterprise who intends to conduct a survey and process data about physical persons.

Finally, at the internal level, INE has specific regulations concerning statistical confidentiality that intend to simplify the management of the principle. Ideally these regulations must be dynamic instruments in permanent update. This is due to the constant technical evolutions not only on the right approach of the confidentiality

principle – and to situations that social and economic developments impel to consider as new exceptions to the general rule – but also on the evolution of information technologies permitting to pull off the “brakes” of the principle as concerns statistical dissemination.

It should be considered that the Portuguese Law does not foresee the access to statistical confidential data for scientific research under any circumstances. As a way to surpass the emptiness of the Portuguese Law and due to the principle of direct applicability of community regulations in Portugal, the Regulations 322/97 and 831/2002 are being considered and all the criteria established in this last one are being applied.

Considering that the current structure of the Portuguese Statistical System states that INE can delegate the production of specific statistical areas in other entities of the public administration, these are equally obliged to apply the same principles of INE namely statistical confidentiality.

2 - Organization of the Portuguese Statistical System – INE, Statistical Council (SC) and other public bodies

The Portuguese Statistical System, such as stated in the Law of 1989, is composed of two entities and specific public bodies for which INE transfers through a legal act the possibility of producing statistics in specific areas.

INE is the "executive" or operational branch of the system with responsibilities in three main axes: statistical production, from collection to dissemination; promotion of statistics teaching and cooperation with other countries aiming to statisticians training.

SC is the other entity of the system with advisory functions, formally responsible for the orientation and coordination of the Statistical System. It has currently a multiple, heterogeneous and sufficiently widened composition that intends to improve the critical analysis of the functioning of the system. In the future however the SC resources and composition should be reviewed.

SC has a main role in the guarantee of the application of statistical confidentiality, namely through the creation and monitoring of the mechanisms allowing its control.

The Council has also the specific ability to analyze and decide when to disclose confidential information produced by INE or other public bodies of the system. Considering the heterogeneous composition of the SC, this analysis as well as the decisions taken on confidential statistical data, is thus the result of the consensus of the sectors represented in the SC, from governmental structures to private users, and has the legal boundaries referred in point 4 below.

The other public bodies that produce statistics due to a legal act from INE must have specific knowledge in the area on which they will produce statistics. A successful example is the area of justice and criminal statistics which are completely transferred to a service of the Ministry of Justice especially qualified in the collection and processing of this information.

3 - The definition, the importance and the boundaries

The definition: the principle of statistical confidentiality is not fully defined in a positive way. Nevertheless, in face to the established in the Law, it is possible to give a definition: *obligation of the statistical producer to guarantee that the information specifically collected for statistical purposes does not suffer any deviation from its purpose during the statistical process, since the data collection until the dissemination.*

The importance: this principle is fundamental. It guarantees to data suppliers that the information they provide will not be used differently from its initial purpose, unless a specific authorization from them has been given. In this manner the trust of respondents in the system is assured.

The boundaries: it is in a sufficiently restrictive context of the possible exceptions to the principle that the Portuguese Law is drawn. Looking “from outside to inside” the law explicitly denies to any external service or authority the possibility to command or authorize the access to confidential statistical data collected by INE or other public bodies.

On the other hand, looking “from inside to outside” the current Portuguese Law admits very little cases as exceptions to the general rule of confidentiality of statistical data. As a main rule it says that *all the individual statistical data are*

confidential and not able to be disclosed either for public or private purposes. It is in force thus a general rule that prohibits the transmission of individual data.

An exception is done to all public data concerning Public Administration on which the opposite rule is in force, that is, the public information when used for statistical purposes is not subject to statistical confidentiality. This rule is in accordance with the general principle established in the Portuguese legal system, of free access to the administrative documentation.

4 - The future of statistical confidentiality in the Portuguese system

· What exists?

The impossibility of access to individual statistical data as a general principle applies to all individual persons, physical or legal, even in the second case in a mitigated form. The truth is that in case of physical persons the law absolutely prohibits the access or dissemination of data, while in the case of legal persons the law allows that SC analyzes specific requests having as limits to its decision the following variables:

- preserving the competition of the economic agents;
- guaranteeing the trust of respondents in the statistical system;
- assuring that statistical data requests refer exclusively to juridical created persons;
- assuring that all requested statistical information is intended to planning and economical purposes or external economical relations;

It can be concluded, therefore, that the current law includes very few exceptions. This situation places each time more difficulties in dealing with some requests whose purposes do not fit in the settings of the law. This creates to SC situations of some “uneasiness” for the discrepancy between the relevance of attending to specific requests and the impossibility to find a legal justification for disclosure.

Concerning specific requests made by researchers for scientific purposes the national law does not state anything. In fact, for these cases and considering the existence of community Regulations on this subject, though specifically conceived for the analysis of requests made to Eurostat, SC has analyzed Portuguese requests using these Regulations criteria. For instance it is very important that researchers belong to recognized scientific institutions, namely Universities, which are co-responsible for the use of the requested data by the researcher. Also very important

is a detailed description of the project and all methodological aspects as well as its duration and the kind of results dissemination that will be done.

The analysis of researcher's requests is made by a group of SC members recruited according to the specific matter, always in the presence of the researchers and the institution they belong to, so that all possible doubts are immediately solved.

In the last years the number of requests made by researchers and analyzed by the SC intended mainly to economical studies and has increased due to the need of statistical data at its maximum detail.

In the case of scientific research, the possibility to create solutions for releasing information is verified, even so applying community legislation. However there are many other situations, analyzed by the SC and deserving a special attention (as for instance public health or special interests of criminal inquiry), where the Law does not allow the release of statistical data.

· What may be improved?

After presenting the Portuguese Statistical System and the legal framework of statistical confidentiality and the main lines defined in the Portuguese Law, it matters now trying an answer to an important question concerning all the statistical systems:

- how to make compatible the increasing requests of statistical detailed data necessary to political decision and other purposes with the need of keeping and assuring the respondents trust?

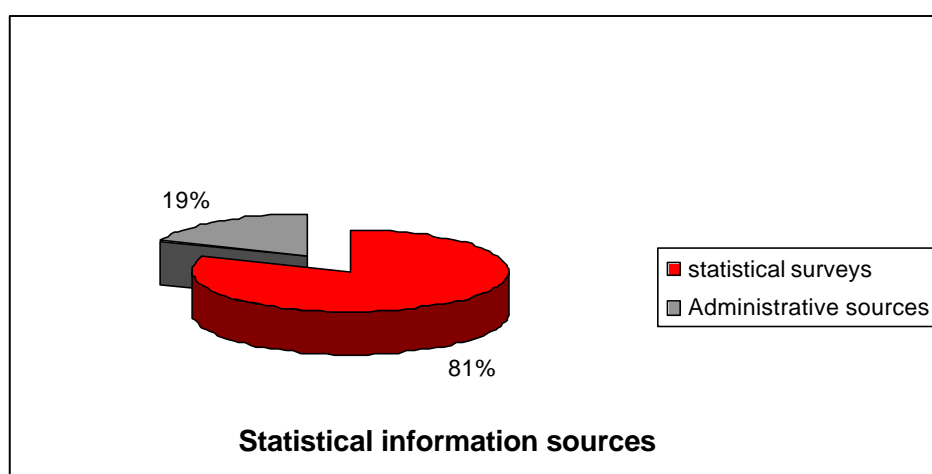
The problem, at least in the Portuguese case, does not present an immediate solution, even though some changes are now beginning.

It will be fundamental to take advantage of what exists and can be improved developing three main lines:

- 1 – The knowledge of international good practices, mainly through increasing the participation in events as the present conference.
- 2 – The reinforcement of the relation between INE and the national authority responsible for personal data protection (National Commission for Data Protection).
- 3 – The progressive use of more data from administrative sources.

Concerning personal data, the statistical Portuguese system is very conditioned by the Personal Data Protection Law because this text – though in principle is a faithful transposition of a community Directive – does not consider statistics as an exception to any other personal data collection, processing or dissemination. This situation is strongly conditioning INE activities specially when personal data are collected through a survey and specifically used for statistical purposes.

On the other hand, and concerning personal or other data, the Portuguese system strongly depends on the collection through specific inquiries – as it can be seen in the graphic below – not taking complete advantage of the existing public administrative data because of legal difficulties. If these administrative data were used, statistics would appear as a second use of the collection and some of the confidentiality problems would be solved.



What can be done?

The Portuguese system and its 1989 Law need a deep reformulation. The solution to be found should conceive new ways that could articulate the growing political and social pressure for getting easily reliable and accurate statistics with the maintaining of the respondents trust. This is not an easy commitment if we consider that simultaneously, different and sometimes opposite values are involved as for example the right to the information and the right to privacy.

A first step might consist on the exploitation of the current attempts to change the legal framework of the Portuguese Statistical System by making use of the diagnosis of constraints and solutions already internationally identified concerning statistical confidentiality. The question is to take advantage of the international best practices that fit to the Portuguese case with some adaptation work.

The solution eventually found to move ahead with the commitment between respondents and INE should specifically review the following situations:

Data concerning physical persons – overtake the established in the Personal Data Protection Law and reconsider the specific need of authorization of some statistical procedures.

A possible solution could consist of creating, in the new Law, an element to assure continuously the linkage between INE and the National Commission for Data Protection. This would allow an immediate and quick reaction that would differentiate INE demands from other requests made to the Personal Protection Data Commission. This would also avoid the current long waiting periods not compatible with the regular and on time statistical production.

Scientific research – include this purpose among the exceptions to confidentiality, so that researchers could reach an easier access to statistical data.

Other specific purposes – enlarge the current group of exceptions considering other purposes as public health or criminal inquiry, in order to better adequate the exceptions of the Law to the user's needs.

The second step consists of finding the balance between the guarantee of maintaining the confidentiality of the data providers and the obligation of satisfying users needs even when they ask for high levels of detailed data.

This implies an enlarged concept about the boundaries of statistical confidentiality resulting of a new “agreement” between statisticians and respondents about their respective expectations.

The third step concerns an efficient control and management of all the confidentiality questions. This could be solved by the creation of a unit that could provide integrated proposals and answers. This unit could function as a liaison between INE and SC. INE could propose new rules and follow their application and also clarify all the doubts concerning internal regulations or the legal framework on statistical confidentiality. It could also coordinate and harmonize procedures in application of automatic solutions based on mathematical methods.

Only if these solutions can not be applicable at all and simultaneously the users have specific needs of detailed data, should the requests be sent to SC for analysis.

References

- Decree nº 294/2001 of 24 November - Access to personal data for INE)
Eurostat, Statistical Confidentiality Committee, (2003) *Protection of Confidential Data*
Law nº 6/89 of 15 of April - Basic Law of the National Statistical System
Law 67 / 98 of 26 October - Personal Data Protection Law
Pinto, Ana Dulce, (2004) *Structuring principles of the new internal regulations about statistical confidentiality*, Seminário sobre o Princípio do Segredo Estatístico, Lisboa
Regulation (EC) nº 322 / 97 of the Council, 17 February
Regulation (EC) nº 831 / 2002 of the Commission, 17 May
UN, (2003) *Statistical Confidentiality and micro-data*, Conference of European Statisticians